**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

Chapter VIII, Rule 32(2) (b)
Description of case

**Writ Petition No. 3566 of 2001**

Shushil Kumar ……. Petitioner.

Versus

A.D.J. and others. …… Respondents.

Date of decision: 21, December 2004

For the approval of:

**Hon'ble Mr. Justice P.C. Pant.**

- Whether the order/judgment should be sent to the reporters for reporting? (yes)

- Whether the reporters be allowed to see the judgment? (yes)

**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.**

**CIVIL MISC. WRIT PETITION NO. 3566 (M/S) OF 2001**
**(OLD NO. 43633/1998).**

**Sushil Kumar Gupta, S/o Late Shri Lala Ram Das**
**R/o 9, Naya Gaon, Mohini Road, Dehradun.**

**……Petitioners.**

**Versus**

1. **The Additional District Judge, (Uttaranchal), Dehradun.**
2. **The Prescribed Authority/First Additional Civil Judge (Sr. Division), Dehradun.**
3. **Budhi Singh S/o Sri Lal Singh R/o 26/6, Inder Road, Dehradun.**
4. **Laxmi Chand Gupta, Son of Ram Das R/o 65, Delhi Administration Plats, Greater Kailash, New Delhi.**
5. **Suresh Chand Gupta son of Late Sri Ram das R/o B-207, O.N.G.C. Colony, Baroda (Gujrat).**
6. **Rajesh Kumar Gupta Son of Late Ram Dass 9, Naya Gaon, Mohini Road, Dehradun.**
7. **Smt. Kasturi Devi D/o Late Sri Ram Das, Wife of Ved Prakash R/o Thana Patan, Muzaffarnagar.**
8. **Smt. Maya Devi, D/o Late Sri Ram Dass Wife of Sri Ramesh Chand, R/o Indira Colony Chhkswala, Dehradun.**
9. **Smt. Dayawati D/o Late Sri Ram Dass wife of Sri Surender Kumar, resident of 14, Naya Gaon, Mohini Road, Dehradun.**
10. **Smt. Vimla Devi D/o Lat Sri Ram Dass, Wife of Shri Ratn Lal Contractor, Ansari Road, Near Patiwal Kothi, Muzaffarnagar.**
11. **Smt. Pushpa D/o Late Sri Ram Dass, Wife of Shri Madan Lal Gupta resident of Mohalla Jatan, Shamli, Muzaffarnagar.**
12. **Sri Hari Kishore S/o Late Sri Ram Dass, R/o 9, Naya Gaon, Mohini Road, Dehradun.**

**……Respondents.**

Mr. B.P. Nautiyal, learned counsel for the petitioner.
Mr. V.K. Kohli a/b Mr. I.P. Kohli, learned counsel for the respondent no.3.

**Hon'ble Prafulla C. Pant, J.**

1. By means of this petition, moved under Article 226 of the Constitution of India, the petitioner has sought a writ in the nature

of certiorari quashing the impugned order dated 02.04.1996 and 20.11.1998 passed by the respondent no.2 and 1 respectively.

2. Brief facts of the case, as narrated in the writ petition are that the respondent no. 3 Budhi Singh moved an application under Section 21 (1) (a) of the U.P. Act No. 13 of 1972 for release of the accommodation in question, which was registered as P.A. Case No. 124 of 1984. Respondents No. 4 to 12 are the tenants along with the petitioner against whom said application was moved. Petitioner's father Ram Dass (now deceased) was the original tenant since 1928 against whom earlier the proceedings of the release of the shop in question were moved but failed. The respondent no. 3, in his present release application stated that he is doing business of selling milk as a hawker and now he needs shop in question for running his own business of milk products. The petitioner contested the application alleging that the land lord has three other shops for doing the business. It was further alleged by the petitioner that in 1963 Sri Ram Autar, elder brother of the respondent no.3 purchased the disputed property from one Sri K.C. Gupta, which was later purchased by the petitioner. It is denied in the release application that if the land lord was doing business as a hawker. According to him respondent no. 3 is sitting in the shop of his brother as such his need was not genuine. The present release application was rejected by the Prescribed Authority initially on 08.12.1989, however, appeal no. 180/ 1987 was filed by respondent no. 3 which was disposed of vide order dated 17.05.1995 and the case was remanded

for considering release application only in respect of part of the premises in questions. Learned Prescribed Authority after recording evidence vide its order dated 02.04.1996 allowed the release application only for the part of the shop. Aggrieved by said order, the landlord as well as tenant preferred appeals before the Lower Appellate Court, which were registered as appeal no. 52/1996 and 57/1996 respectively. It is alleged by the petitioner that the learned lower appellate court has wrongly allowed the appeal and released the whole shop without considering the comparative hardship of the petitioner.

3. A counter affidavit has been filed on behalf of the contesting respondent in which contents of the release application has been reiterated and the contents of the writ petition are denied if the respondent no. 3 is in occupation of any shop. It is further stated in the counter affidavit that the petitioner is doing his business with the name of (A) Ruchika Furnitures. (B) Photostat and Lamination Shop and (C) Computer Training Centre in Naya Nagar and as such he is not in a need of shop in question. Apart from this, it is stated that for running the business of Paneer and Khoa, respondent no. 3 requires the shop in question for running his own business. It is also alleged in the counter affidavit that finding of fact arrived by learned trial court can not be disturbed by the High Court in its revisional/supervisory jurisdiction.

4. I heard learned counsel for the parties and perused the affidavits, counter affidavit and rejoinder affidavits filed by the parties.

5. Learned counsel for the petitioner submitted before this court that the need of the respondent no.3 is not genuine and the hardship of the petitioner was not considered by the lower appellate court. Both the Prescribed Authority as well as the learned appellate court has concurrently found the need of the land lord (respondent no.3) as genuine as such this court is not supposed to interfere into the concurrent finding of the fact unless it is perverse. There is nothing on the record, which shows the findings of fact to be perverse. It is admitted between the parties that as far as the order of the Prescribed Authority is concerned, part of the premises in question has been delivered to the land lord (respondent no.3) and dispute remains only as to the main shop in question.

6. As to the comparative hardship between the parties on behalf of the learned counsel for the respondent my attention was drawn to the counter affidavit in which it has been stated that the petitioner is already running business in Naya Nagar, in a newly constructed building and the said business is three fold. (1) Ruchika Furnitures. (2) Photostat and Lamination Shop and (3) Computer Training Centre. It is further argued by the learned counsel for the respondent no. 3 that in view of said fact there is no comparative hardship in favour of the petitioner as against that of land lord (respondent no. 3). In reply to para 24 of the counter affidavit, in

his rejoinder affidavit petitioner has denied doing three fold business as alleged by the respondent no. 3 but has stated that the said house is situated in outskirts in Dehradun. It is further stated in the rejoinder affidavit in reply to the above allegation of the respondent no.3 that his daughter is running the furniture shop after taking loan from Prime Minister's Rojgar Yojana. However, running Photostat machine has been admitted. As to the Computer Training Center only this much has been stated that the same is being run for young students. It is not denied if Centre is being run free of cost. As such considering that the business is established comfortably by the petitioner in Naya Nagar, there cannot be bigger hardship as against the land lord (respondent no. 3).

7. The learned lower appellate court have given detailed reasons for coming to the conclusion as to the genuine need of the land lord and comparative hardship in his favour. In the circumstances and in view of our discussions this court is not inclined to interfere with the impugned order under the writ jurisdiction which is not an appellate jurisdiction. Accordingly, the writ petition is dismissed. No order as to costs.

**(Prafulla C. Pant, J.)**

**Dated: 21st December 2004.**

*P. Bandhavakar*